



U.S. Department of Justice

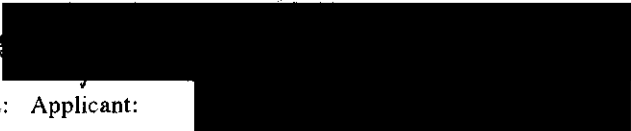
Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE:

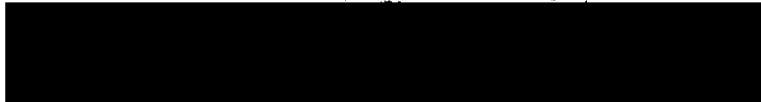


Date:

APR 28 2000

IN RE: Applicant:

APPLICATION:



IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data added to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 8, 1943 in [REDACTED] Tamaulipas, Mexico. The applicant's father, [REDACTED] was born in Mexico in 1918 and never became a United States citizen. The applicant's mother, [REDACTED], was born in 1924 in the United States. The applicant's parents married each other in June 1942. The applicant seeks a certificate of citizenship under § 201(g) of the Nationality Act of 1940 (NA 1940), based on his claim that he acquired U.S. citizenship at birth through his mother.

The district director determined the record failed to establish that the applicant's United States citizen parent had resided in the United States or its outlying possessions for a period of 10 years, at least 5 of which were after the age of 16 years. The district director then denied the application accordingly.

On appeal, counsel argues that the applicant's mother's residence at any time after the age of 16 years is applicable in this matter.

The citizenship of a person born outside the United States is determined by the statutes and law in existence at the time of the person's birth. Matter of B--, 5 I&N Dec. 291 (BIA 1953), overruled on other grounds; Matter of M--, 7 I&N Dec. 646 (BIA 1958); Montana v. Kennedy, 278 F.2d 68 (7th Cir. 1960), aff'd, 366 U.S. 308 (1961). § 201(g) of NA 1940, which was superseded by § 301(g) of the Immigration and Nationality Act (the Act), was in effect at the time of the applicant's birth.

Section 201 of NA 1940 states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person has had 10 years' residence in the United States or one of its outlying possessions, at least 5 of which were after attaining the age of 16 years, the other one being an alien. If the citizen parent was in the U.S. military service between December 7, 1941, and December 31, 1946, then the U.S. citizen parent must have resided in the United States or in an outlying possession for 10 years, at least 5 of which were after the age of 12; or if the citizen parent was in the U.S. military service between January 1, 1947, and December 24, 1952, then the U.S. citizen parent must have resided in the United States or in an outlying possession for 10 years, at least 5 of which were after the age of 14.

Section 201(g) of NA 1940 clearly specifies that the citizen parent's residence in the United States must occur prior to the birth of the child and not after the child's birth. The applicant's mother was 19 years and 1 month old when the applicant was born. It

was impossible for her to satisfy the residence requirement of 5 years after the age of 16 in order to transmit U.S. citizenship to the applicant.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has not met this burden of establishing that his mother resided in the United States a total of 10 years, 5 of which were after the age 16 years and prior to the applicant's birth. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.